



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
DIRECTOR

## STATE BOUNDARY COMMISSION

### **REVISED** **MEETING NOTICE**

**THURSDAY – NOVEMBER 9, 2006 - 1:30 PM**  
**611 W. OTTAWA STREET (OTTAWA BUILDING) - LANSING**  
**CONFERENCE ROOM 1 – UPPER LEVEL**  
*(revised map attached)*

### AGENDA

<u>COUNTY</u>	<u>DOCKET</u>	<u>ACTION</u>
KENT	04-AP-4	Administrative meeting to discuss a report to the Director on the status of negotiations for proposed annexation of territory in Vergennes Township to the City of Lowell.
LAPEER	06-AP-2	Adjudicative meeting to consider modification in survey as recommended.

TO CONFIRM WHETHER A DOCKET ITEM HAS BEEN POSTPONED, OR IF YOU HAVE ANY QUESTIONS REGARDING THIS MEETING, PLEASE CALL (517) 335-3439 BEFORE 11:00 AM ON THE DAY OF THE MEETING.

THE COMMISSION MAY, AT ITS DISCRETION, REVISE THIS AGENDA OR TAKE UP OTHER ISSUES AS NEED AND TIME ALLOW.

The meeting site is accessible and includes handicapped parking. Persons with disabilities who require additional accommodation in order to participate should contact the Boundary Commission Office by telephone (517-335-3439) or email (caholme@michigan.gov) at least ten business days in advance. In order to enhance accessibility for everyone, individuals attending the meeting are encouraged to refrain from using heavily scented personal care products.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
DIRECTOR

To: State and Lapeer County Boundary Commissioners

From: Christine Holmes, Manager  
State Boundary Commission

Date: November 9, 2006

Subject: **Docket # 06-AP-2**  
**Petition to Annex Territory in Elba Twp to the City of Lapeer**

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At the State Boundary Commission meeting of July 27, 2006, this petition was approved for legal sufficiency, "contingent upon a revised description." A motion was made "for additional description to meet standards of survey." This contingency provision was issued under Boundary Commission Rule 123.27(2), which states:

"The commission may order that all or part of the boundaries of the area be certified by a registered land surveyor."

In compliance with the Commission's action, a revised Part I map and Part III legal description has been submitted. These documents, which include correspondence from the petitioner's attorney, are attached for your review, along with copies of the Part I map and Part III legal description that were submitted with the petition.

A letter from the Office of Land Survey and Remonumentation, which describes their review of the map and legal description as resubmitted, is provided. Mr. Keith Lambert is available to provide further comment for the Commission.

Encl.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
DIRECTOR

November 6, 2006

Christine A. Holmes  
Manager  
State Boundary Commission

RE: Docket 2006-AP-02 Elba Township / City of Lapeer

Dear Christine:

On October 17, 2006, we received from the Office of Policy & Legislative Affairs, State Boundary Commission a letter from Gary W. Howell dated October 6, 2006 which included a revised PART I map dated September 25, 2006 and a revised PART III legal description with no date.

We have reviewed the revised PART I map and the revised PART III legal description for 2006-AP-02 and have the following comments for your consideration.

The revised PART I map and the revised PART III legal description are substantially accurate and substantially consistent with each other.

Sincerely,

Maynard R. Dyer, P.S., Director  
Office of Land Survey & Remonumentation

Sincerely,

Keith E. Lambert, P.S., Plat Examiner  
Office of Land Survey & Remonumentation

MRD: KEL:aim

*Providing for Michigan's Safety in the Built Environment*

BUREAU OF CONSTRUCTION CODES  
P.O. BOX 30704 • LANSING, MICHIGAN 48909  
Phone (517) 241-6321 • Fax (517) 241-6301  
[www.michigan.gov](http://www.michigan.gov)

LAW OFFICES

**TAYLOR, BUTTERFIELD, RISEMAN, CLARK, HOWELL, CHURCHILL & JARVIS, P.C.**

407 CLAY STREET, LAPEER, MICHIGAN 48446 • (810) 664-5921 • FAX (810) 664-0904

Carl M. Riseman  
Gary W. Howell  
David J. Churchill  
Steven D. Jarvis  
Todd O. Pope  
Eric J. Knuth (Of Counsel)

Robert L. Taylor (1909-1992)  
Thomas K. Butterfield (Of Counsel)  
Emory W. Clark (Of Counsel)

October 6, 2006

Ms. Christine Holmes, Manager  
State Boundary Commission  
Office of Policy & Legislative Affairs  
611 W. Ottawa Street  
P.O. Box 30004  
Lansing, MI 48909

Re: Revised Map and Legal Description  
Docket 06-AP-2

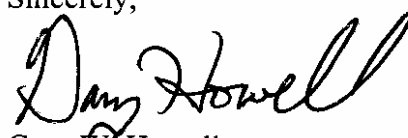
Dear Ms. Holmes:

Enclosed please find the revised Part I Map and Part III Legal Description for the proposed annexation of land from Elba Township to the City of Lapeer. As you know, when the Boundary Commission approved legal sufficiency at its July 27, 2006 meeting, it directed that a revised map and legal description be submitted.

Our Surveyor, Mr. Henry Horton of Rowe Engineering, has consulted with Keith Lambert in order to be sure that the revisions are acceptable.

Please submit this document to the Boundary Commission so that the public hearing can be set. If there are any questions relating to this matter, please feel free to contact me. It is my understanding that the regular October meeting of the Boundary Commission has been reset for November 9.

Sincerely,



Gary W. Howell

GWH/kld  
enclosure  
cc: Peter Whitman

**RECEIVED**  
DEPT. OF LABOR & ECONOMIC GROWTH

OCT 10 2006

OFFICE OF POLICY & LEGISLATIVE AFFAIRS  
STATE BOUNDARY COMMISSION

# PART I MAP

CITY OF LAPEER

CENTER OF SECTION 1,  
T7N-R9E, ELBA TWP.,  
LAPEER CO., MI

EAST-WEST 1/4 LINE

WESTERLY 1323.37'

WEST 1/4 CORNER SECTION 1, T7N-R9E,  
ELBA TWP., LAPEER CO., MI

AREA PROPOSED FOR  
ANNEXATION

(60.168 ACRES)

ELBA  
TOWNSHIP

CITY OF LAPEER

2119.09'

SOUTHERLY

WEST SECTION LINE

NORTHERLY 1534.75'

NE COR.  
SMITH ACRES

N61°28'54"E

ELBA TOWNSHIP  
SMITH ACRES  
LIBER 1, PAGE 59

N28°31'06"W  
232.58'

N61°28'54"E  
100.00'

N83°01'29"E  
264.00'

N89°49'40"E  
178.00'

ELBA  
TOWNSHIP

S28°31'06"E  
150.00'

ROAD C/A

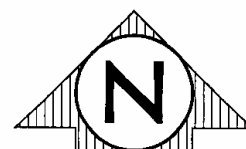
DAVISON ROAD (M-21)

ELBA TOWNSHIP  
ACT 425 CONDITIONAL  
TRANSFER AREA

POINT OF  
BEGINNING

NORTHERLY  
528.00'

SOUTHWEST CORNER  
SECTION 1, T7N-R9E,  
ELBA TWP., LAPEER CO., MI



1 inch = 300 ft.

## LEGEND



EXISTING LAPEER CITY LIMITS



PERIMETER OF 60.168 ACRES  
PROPOSED FOR ANNEXATION

## ROWE INCORPORATED

LAPEER  
128 N. Saginaw  
Lapeer, MI 48446  
810-664-9411

CORPORATE OFFICE  
6211 Taylor Dr., Flint  
Flint, MI 48507  
810-341-7500

Mt. PLEASANT  
127 S. Main St.  
Mt. Pleasant, MI 48858  
989-772-2138

SHEET NO. 1 OF 1

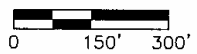
SCALE 1"=300'

FIELD N/A

DRAWN SLC

JOB NO. 06L0104

DATE 9-25-06



CHECKED HBH

REVISED

CAD DWG. Part 1 Map

**HARRINGTON-WHITMAN**

**Revised legal description for proposed annexation**

**PART III LEGAL DESCRIPTION:**

Part of the Southwest  $\frac{1}{4}$  of Section 1, T7N-R9E, Elba Township, Lapeer County, Michigan, described as beginning at a point on the West line of Section 1 that is Northerly, 528.0 feet from the Southwest corner of said Section 1; thence North  $89^{\circ}49'40''$  East 178.0 feet; thence North  $83^{\circ}01'29''$  East 264.0 feet; thence North  $61^{\circ}28'54''$  East 100.0 feet; thence South  $28^{\circ}31'06''$  East 150.0 feet to the centerline of Davison Road (M-21); thence North  $61^{\circ}28'54''$  East 556.65 feet along said centerline; thence North  $28^{\circ}31'06''$  West 232.58 feet along the West line of "Smith Acres," as recorded in Liber 1, Page 59 of Lapeer County Plat Records; thence North  $61^{\circ}28'54''$  East 398.07 feet along the North line of said plat to the Northeast corner of said plat; thence Northerly 1534.75 feet along the existing City of Lapeer limit line to the East-West  $\frac{1}{4}$  line of said Section 1; thence Westerly 1323.37 feet along said East-West  $\frac{1}{4}$  line and the City of Lapeer limit line to the West  $\frac{1}{4}$  corner of Section 1; thence Southerly 2119.09 feet along the West line of said Section 1 to the point of beginning. Contains 60.168 acres.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
DIRECTOR

## STATE BOUNDARY COMMISSION

### MEETING NOTICE

THURSDAY – JULY 27, 2006

1:30 P.M.

STATE SECONDARY COMPLEX - GENERAL OFFICE BUILDING  
CONFERENCE ROOM B

7150 Harris Drive - Dimondale  
(map attached)

### AGENDA

<u>COUNTY</u>	<u>DOCKET</u>	<u>ACTION</u>
EATON	06-AP-1	Adjudicative meeting to adopt Summary of Proceedings, Findings of Fact, and Conclusions of Law for rejection of legal sufficiency on the proposed annexation of territory in Oneida Township to the City of Grand Ledge.
EATON	06-AP-3	<del>Legal sufficiency on the proposed annexation of territory in Oneida Township to the City of Grand Ledge.</del> <b>POSTPONED</b>
LAPEER	06-AP-2	Legal sufficiency on the proposed annexation of territory in Elba Township to the City of Lapeer.
KENT	04-AP-4	Status of negotiations on the proposed annexation of territory in Vergennes Township to the City of Lowell.
GENESEE	02-AP-6	Administrative session on Court of Appeals opinion (Fenton).

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STATE BOUNDARY COMMISSION  
OFFICE OF POLICY & LEGISLATIVE AFFAIRS  
611 W. OTTAWA STREET • P.O. BOX 30004 • LANSING, MICHIGAN 48909  
517 335-3439 • [www.michigan.gov/dleg](http://www.michigan.gov/dleg) • Fax: 517 241-9822



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
ACTING DIRECTOR

To: State and Lapeer County Boundary Commissioners

From: Christine Holmes, Manager  
State Boundary Commission

Date: July 27, 2006

Subject: **Docket # 06-AP-2**  
**Legal Sufficiency Review**  
**Petition to Annex Territory in Elba Twp to the City of Lapeer**

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A petition to request the annexation of 60.168 acres in Lapeer Township to the City of Lapeer was filed with the Boundary Commission on April 3, 2006.

The following comments are based on my review of this petition:

1. The petitioners are identified as Peter Whitman, James Harrington, and Richard Menzing, who is the authorized agent on behalf of Faith Christian Family Church. Messrs. Whitman and Harrington own a 50.168 acre parcel, and the church owns a 10 acre parcel.
2. Although the area proposed for annexation is bounded by the City of Lapeer on the north and east sides of the property, Mr. Lambert will address discrepancies with boundary lines and legal descriptions.
3. Part VI of the petition indicates that the southern portion of the area proposed for annexation is contiguous with the City of Lapeer. However, a 425 agreement between Elba Township and the City of Lapeer, filed with the Office of the Great Seal in 1986, precludes this portion of the petitioned property from meeting the conditions for contiguity.
4. According to the 425 agreement, the conditional property will transfer to the city upon expiration of the agreement in 2036. Hence, should the petitioned property be annexed either by the Boundary Commission, mutual resolution, or another method, the township property located to the east of the area proposed for annexation and north of the conditional property would become a township enclave, which is not permitted by Michigan courts.
5. Legal references and excerpts to substantiate the findings in sections 3 and 4 above are attached.



A letter from the Office of Land Survey and Remonumentation, which describes their review of the map and legal description, is provided. Mr. Keith Lambert is available to provide further comment for the Commission.

MEMORANDUM

October 8, 1996

TO: Helen A. Kruger  
Office Supervisor  
Office of Great Seal  
Department of State

FROM: George M. Elworth *GME*  
First Assistant  
Municipal and Military Affairs Division

RE: Requirements for contiguity in annexation

**RECEIVED**  
MICHIGAN DEPT. OF CONSUMER & INDUSTRY SERVICES

NOV 30 1996

CORPORATION, SECURITIES & LAND DEVELOPMENT BUREAU  
MANUFACTURED HOUSING & LAND DEVELOPMENT DIVISION  
STATE BOUNDARY COMMISSION

On Friday, October 4, 1996, you asked me to send you copies of cases discussing the requirements for contiguity in annexations under Michigan law.

I am enclosing several cases and Attorney General opinions which discuss the requirements for contiguity.

In the landmark case of Midland Twp v State Boundary Comm'n, 401 Mich 641, 677; 259 NW2d 326 (1977), which upheld the constitutionality of the act establishing the State Boundary Commission, MCL 123.1001 et seq; MSA 5.2242(1) et seq, the Michigan Supreme Court observed that:

'[I]n the light of the purpose sought to be served and the practical aspects of annexation' ... territory annexed to a city must adjoin the city  
....

In Genesee Twp v Genesee County, 369 Mich 592, 601; 120 NW2d 759 (1963), the court rejected the contention that a 150' right-of-way extending 1/2 mile from the city's boundary line to the area to be annexed was sufficient to provide contiguity.

In Owosso Twp v City of Owosso, 25 Mich App 460, 464; 181 NW2d 541 (1970), aff'd 385 Mich 587; 188 NW2d 421 (1971), the court stated:

We consider that contiguity requires more than mere touching. We view contiguity as requiring a reasonably proportionate connection to the massed body of the annexing municipality.

According to the court in the Owosso case, contiguity was not present where the parcel to be annexed was physically connected to the city by a strip of land approximately 1326' long by 280' wide. The single-unit rationale for the requirement of contiguity is set forth in Owosso, 467:

We consider that included in the requirement of contiguity are the elements of reasonable compactness and regularity of boundary so as to insure that the annexed and annexing territories become an unbroken mass which can function effectively as a single unit rather than as an armed monster with only minimally-connected appendages.

We hold that the parcel as outlined in the petition for annexation here lacks the contiguity and compactness necessary to the efficient and effective operation of municipal services as a result of the gerrymandering ... .

It should be noted that this contiguity requirement is found in Michigan cases (which predate the State Boundary Commission Act) rather than in the State Boundary Commission Act or other statute.

Transfers by Agreement Pursuant to 1984 PA 425

By contrast, the transfers of land from townships to cities pursuant to transfer agreements under 1984 PA 425, MCL 124.21 et seq; MSA 5.4087(21) et seq, need not be contiguous. OAG, 1987-1988, No 6469, p 200 (September 30, 1987). However, such transfers under Act 425 may not be used by a city to establish contiguity for subsequent annexations of adjoining township land to the city. OAG, 1989-1990, No 6667, p 399 (November 13, 1990).

GME/eb

Encs.

c: Dennis Stabenow  
Deborah A. Devine  
Milton I. Firestone  
Research Memo 96-24

attorneys/elworth:kruger1

vising them that their only concern should be whether the signatures and description on the petition were valid, and that it was up to the courts to decide any question as to size, shape or location of the parcel. By resolution the board of supervisors called an election on the question of the annexation of the described territory for August 6, 1968. In that election, the only two qualified electors included in the area to be annexed voted for the annexation. In the balance of the township there were 491 votes against annexation and 161 votes in favor of it. The proposition was carried in the City of Owosso by a vote of 1,773 to 475.

On September 5, 1968, the instant proceedings were commenced by the plaintiffs to have the election set aside because of alleged gerrymandering and lack of contiguity. While the trial court ruled that contiguity was an essential element of a proper annexation, it attempted to distinguish *Genesee Twp. v. Genesee County* (1963), 369 Mich 592, by noting that the 1,326 by 282 foot strip involved here was sufficient, for traffic and utility purposes, to make the bulk of the parcel contiguous to the City of Owosso. The trial court, observing accurately that the annexation statute at that time did not prescribe any standards as to the shape and size of an area to be annexed, decided the determination of such questions was not a proper judicial function.

The Court of Appeals reversed, ruling that reasonable compactness and regularity of boundary are included in the requirement of contiguity. The Court decided that the necessary contiguity was not present here, and that the configuration of such a parcel is not totally beyond judicial review. On the basis of the law as of the time of this action, we affirm the Court of Appeals.

In the case of *Goethal v. Kent County Supervisors* (1960), 361 Mich 104, this Court held that it was a function of the legislature to establish standards for the annexation of territory by municipal corporations.

We take note that since April, 1968, when this petition for annexation was filed, our legislature has passed comprehensive new legislation dealing with this area of the law. The new statute, MCLA § 117.9 (Stat Ann Current Material § 5.2088), as amended by PA 1970, No 219, effective April 1, 1971, now provides the only procedures by which a municipal corporation may annex territory. It establishes certain substantive standards to guarantee that future annexations will be made for the general good of the areas concerned, and not merely for the private good of individual citizens. The statute also gives broad powers concerning annexations to an independent State Boundary Commission.

Cases arising prior to the new statute must follow pertinent judicial precedent. In *Genesee Twp. v. Genesee County* (1963), 369 Mich 592, this Court laid down principles for annexation problems applicable pending the more specific legislation now enacted. There we refused to compel an annexation election even though all the statutory procedural requirements had been complied with. Our language left no doubt that in the absence of a definitive statute, certain substantive standards for annexations would be required by the courts:

“So, as to territorial extent, the idea of a city is one of unity, not of plurality; of compactness or contiguity, not separation or segregation. Contiguity is generally required even in the absence of statutory requirement to that effect, and where the annexation is left in the discretion of a judicial

## PITTSFIELD TOWNSHIP v CITY OF ANN ARBOR

Docket No. 77-4078. Submitted June 22, 1978, at Lansing.—Decided October 2, 1978.

Ann Arbor City Council passed a resolution annexing six parcels of land, collectively referred to as the airport parcel, from Pittsfield Township. A proceeding was commenced in Washtenaw Circuit Court, by Pittsfield Township, to have the annexation declared null and void. Ann Arbor City Council passed a second resolution annexing land known as the Eisenhower Parkway which was also located in Pittsfield Township. Pittsfield Township requested the court to void this annexation also. The court found that the attempted annexation of the airport property was illegal because it created an enclave of township property that was politically deadlocked and could result in gerrymandering. The court also found that the boundary of the attempted airport annexation was not a reasonable configuration, was not proportionately adjacent or contiguous to the city and could not properly be annexed by resolution. The court found that Eisenhower Parkway was not a park, was not vacant property, and that its annexation would also create an illegal township enclave within city boundaries. Summary judgment for Pittsfield Township as to both attempted annexations, Ross W. Campbell, J. The City of Ann Arbor appeals. *Held:*

The annexation of township territory to a city by resolution of its city council requires that the property be adjacent to the city, a park or vacant property, owned by the city and without residents thereon. The annexation statute is not exclusive and courts may examine proposed city annexations to determine whether they are reasonably contiguous with the city and whether illegal enclaves would be created. The court acted properly when it examined the proposed annexations and found

## REFERENCES FOR POINTS IN HEADNOTES

[1, 6] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 50, 55, 57.

[2-4] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 57.

[5] 73 Am Jur 2d, Statutes §§ 204, 206-208.

[7] 73 Am Jur 2d, Summary Judgment § 18.

motion for summary judgment, thereby voiding the attempted annexation of these two properties.

MCL 117.9(8); MSA 5.2088(8) provides the procedure for an annexation by resolution when certain conditions are met:

"(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the same, and there is no one residing thereon, such territory may be annexed to the city solely by resolution of the city council of the city  
\* \* \* "

The defendant city argues that the terms of the statute, with which it has complied, are exclusive. We disagree. Michigan appellate courts have traditionally held that additional factors to be considered by trial courts in annexation cases include contiguity, gerrymandering, and reasonable compactness of boundaries. *Saginaw v Saginaw County Board of Supervisors*, 1 Mich App 65; 134 NW2d 378 (1965), *Owosso Twp v Owosso*, 25 Mich App 460; 181 NW2d 541 (1970), *aff'd*, 385 Mich 587; 189 NW2d 421 (1971). The judiciary must apply the test of reason to insure compliance with legislative intent. *Owosso Twp, supra*, 25 Mich App at 467.

We conclude that the trial court in the case at bar acted properly when it examined the proposed annexations to determine whether they were reasonably contiguous with the city and whether they created illegal enclaves.

An enclave is defined as a tract of territory enclosed within a foreign territory.<sup>3</sup> In *Genesee Twp v Genesee County*, 369 Mich 592, 603; 120 NW2d 759 (1963), the Supreme Court quoted ex-

<sup>3</sup> *Saginaw v Saginaw County Board of Supervisors*, 1 Mich App 65, 70 (1965).

tensively from 37 Am Jur, *Municipal Corporations*, § 27, and included the following observation:

"When contiguity is required by statute, the attempted consolidation of 2 municipalities which are contiguous at 2 points with an intervening space between is unlawful, since it would leave a tract of territory within but not part of the consolidated municipality."

This has been taken as an invalidation of enclaves created by annexation. *Saginaw v Saginaw County Board of Supervisors, supra*.

The trial court found that the proposed airport annexation would create a triangular enclave of township surrounded by city territory. There was, thus, no error in the grant of summary judgment to the plaintiff on the proposed airport annexation.

We note that there is no evidence of improper gerrymandering in the city's actions. As we said in *Grand Haven Twp v Grand Haven (On Remand)*, 38 Mich App 122; 196 NW2d 3 (1972), the irregular boundaries of a proposed annexation can be explained by the fact that the city bought the property involved parcel by parcel as it became available on the public market.

The defendant City of Ann Arbor claims that it should be allowed to annex Eisenhower Parkway, which it owns in fee, according to the terms of MCL 117.9(8); MSA 5.2088(8), because it is "vacant property". But the fact that no one does or can reside on the property does not render it vacant. According to the terms of the statute:

"(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the same, and there is no one residing thereon, such territory may be annexed to the city solely by resolution of the city council of the city \* \* \* ." (Emphasis added).



In construing the words of a statute, effect must be given to each part of a sentence, so as not to render any other part nugatory. *Melia v Employment Security Comm*, 346 Mich 544, 562; 78 NW2d 273 (1956). If we said that vacant land is the same as land upon which no one resides, we would render part of the sentence in the statute redundant. According to MCL 8.3a; MSA 2.212(1) words are to be construed according to their common and approved usage. Webster's New Collegiate Dictionary (1974 ed), p 1290, defines vacant land as that which is not put to use.

The statute requires that the land to be annexed must (a) be owned by the city and (b) consist of (1) a park or (2) land which is not resided upon and which is not being utilized for any beneficial purpose. However, the Eisenhower Parkway is in constant use as a road, and has not been abandoned. Therefore, it is not "vacant property" for purpose of the statute, and the trial court did not err in voiding the annexation.

Further, annexation of the roadway would result in the creation of an enclave of township property resided in by over 100 persons. The creation of an enclave is not permitted by Michigan courts, as we have discussed earlier.

The defendant city argues further that the plaintiff's motion for summary judgment was fatally defective because it contained some facts of which the affiant had no personal knowledge, in contradiction of the rule in *Jones v Shek*, 48 Mich App 530; 210 NW2d 808 (1973), and GCR 1963, 117.3, 116.4. However, we find that the other portions of the affidavit, of which the affiant did have personal knowledge, were legally sufficient to support the trial court's decision.

Affirmed.

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

ANNEXATION:

Property separated from city by a contiguous parcel which has been conditionally transferred to city

MUNICIPALITIES:

Authority to annex property separated from city by a contiguous parcel which has been conditionally transferred to city

Property outside of a city's limits may not be annexed to the city if the property in question is separated from the city by a contiguous parcel that has been previously conditionally transferred to the city under 1984 PA 425.

Opinion No. 6667

Honorable Robert Bender  
State Representative  
The Capitol  
Lansing, MI 48909

NOV 13 1990

11-19 1990

You have requested my opinion concerning the annexation of property to a city where the parcel to be annexed is not contiguous to the city boundary, but is contiguous to property transferred to the city which, in turn, is contiguous to the city. You advise that the transferred property was acquired pursuant to 1984 PA 425, MCL 124.21 et seq; MSA 5.4087(21) et seq, which authorizes the conditional transfer of property between cities, townships and villages for economic development projects. Based on these facts, your question may be phrased as follows:

May property outside of a city's limits be annexed to the city if the property in question is separated from the city by a contiguous parcel that has been

previously conditionally transferred to the city under  
1984 PA 425?

The law is settled that territory may not be annexed to a city unless the territory is contiguous to the city. Genesee Twp v Genesee County, 369 Mich 592, 601-605; 120 NW2d 759 (1963); Twp of Owosso v City of Owosso, 385 Mich 587, 590-591; 189 NW2d 421 (1971); Midland Twp v State Boundary Comm'n, 401 Mich 641, 677; 259 NW2d 326 (1977). Here, the property to be annexed is not contiguous to the city unless the adjoining conditionally transferred property has become a part of the city for purposes of conferring contiguity.

A transfer, pursuant to section 2 of 1984 PA 425, is conditional and may be made for a period not to exceed 50 years, although the agreement may be renewed for additional periods of not to exceed 50 years. MCL 124.22; MSA 5.4087(22). A conditional transfer of property is controlled by a written contract between the affected local units. Section 2(1) of 1984 PA 425, MCL 124.22(1); MSA 5.4087(22)(1). Unless a contract provides otherwise, property conditionally transferred pursuant to 1984 PA 425 is for the term of the contract and for all purposes under the jurisdiction of the local unit to which the property is transferred. Section 8 of 1984 PA 425, MCL 124.28; MSA 5.4087(28).

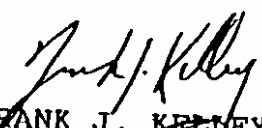
The contract for conditional transfer between the city and township in the instant case does provide that if the city does not comply with certain paragraphs of the contract, the

transferred area shall return to the township. There is no provision in the contract that, at the end of the contract, the city will retain jurisdiction of the transferred property. Section 7(d) of 1984 PA 425, MCL 124.27(d); MSA 5.4087(27)(d).

Section 9 of 1984 PA 425 provides that "[w]hile a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract." MCL 124.29; MSA 5.4087(29). Thus, the conditionally transferred area may not be annexed to the city to establish contiguity.

**ATTACHED**  
[AS observed in OAG, 1987-1988, No 6469, p 200, 202 (September 30, 1987)], "Act 425 deals with transfer of jurisdiction for a limited period and not annexation of territory to become a permanent part of the governmental unit...". Thus, the conditionally transferred area does not become a permanent part of the city and does not confer contiguity on the parcel to be annexed.

It is my opinion, therefore, that property outside of a city's limits may not be annexed to the city if the property in question is separated from the city by a contiguous parcel that has been previously conditionally transferred to the city under 1984 PA 425.

  
FRANK J. KELLEY  
Attorney General

**ECONOMIC DEVELOPMENT PROJECTS:** Contract for property transfer between governmental units

**MUNICIPALITIES:** Contract for property transfer between governmental units

A city and a township may enter into a contract to transfer to the city governmental jurisdiction over a parcel of land located wholly within the township and noncontiguous to the city for the purpose of establishing an industrial park as authorized by 1984 PA 425.

Opinion No. 6469

September 30, 1987.

Honorable Ralph Ostling  
State Representative  
The Capitol  
Lansing, Michigan 48913

You have requested my opinion on the following question:

May a city enter into a contract with an adjoining township to transfer governmental jurisdiction over a parcel of land in the township under 1984 PA 425 upon which the city plans to establish an industrial park where the parcel is located entirely within the township and is noncontiguous with the boundaries of the city?

Your letter of request for opinion indicates that the proposed industrial park would be located upon a multi-acre parcel adjoining the city airport. Both the parcel and the city airport are noncontiguous to the boundaries of the city.

1984 PA 425, MCL 124.21 *et seq*; MSA 5.4087(21) *et seq*, authorizes the transfer of property by contract between cities, townships, or villages for the purpose of an economic development project.

Act 425, § 2, provides:

“(1) Two or more local units may conditionally transfer property for a period of not more than 50 years for the purpose of an economic development project. A conditional transfer of property shall be controlled by a written contract agreed to by the affected local units.

“(2) A contract under this act may be renewed for additional periods of not to exceed 50 years upon approval of each legislative body of the affected local units.”

The Legislature has carefully prescribed the standards that must be observed before a contract transferring jurisdiction for such purposes may be effected. Before the governmental units may enter into the contract, each must hold a public hearing after notice of the meeting is provided to the public as required by the Open Meetings Act, 1976 PA 267, MCL 15.261 *et seq*; MSA 4.1800(11) *et seq*. The decision to enter into the contract must be approved by a majority vote of the members elected and serving upon the legislative body of each governmental unit. Act 425, § 4. The resolution approving the contract may be made expressly subject to a referendum by the electors of the governmental unit. In the absence of such a condition, the electors of the governmental unit may, upon petition signed by 20 percent or more of the registered electors of the governmental unit, make such contract subject to referendum and approval of the electors. Act 425, § 5.

The contract must also specify the length of the contract, the specific sharing of taxes and other revenues by the governmental units, and the local unit which has jurisdiction over the transferred area upon expiration, termination, or nonrenewal of the contract. Act 425, § 7. During the term of the contract, the property conditionally transferred is under the jurisdiction of the local unit to which it is transferred, unless the contract otherwise provides. Act 425, § 8.

Finally, no other "annexation or transfer" of the property transferred shall take place while the contract is in effect. Act 425, § 9.

The Legislature has imposed no express requirement in Act 425 that jurisdiction over property contiguous to a city, township, or village only may be transferred. A study of the legislative history of Act 425 reveals that this was a deliberate omission. HB 4995 was introduced by Representatives Emerson, Cherry, Fitzpatrick, Scott, Griffin, and Clack. It is noted that Representative Emerson's district is the eighty-first, composed of portions of the City of Flint and the Township of Flint, Genesee County, Michigan.

House Legislative Analysis, HB 4995, June 11, 1984, is most instructive:

**"THE APPARENT PROBLEM:**

"In 1979, officials at the General Motors plant in Flint wanted to expand their plant, but there was no vacant land within the city to accommodate such plans. Genesee Township had a vacant industrial park about a mile from the city which was adequate to accommodate the proposed new plant, and General Motors decided to pursue the possibility of getting that land. The ensuing effort by General Motors resulted in the city and township getting together and working out a contractual arrangement whereby the township would transfer the land to the city in exchange for a share in the tax revenue. Although many persons agreed that this unique cooperative approach to the transfer of property between local units of government was laudable, some questioned the legality of such an arrangement and believed the agreement could have been challenged in court on the grounds that the agreement skirted the authority of the State Boundary Commission, which has statutory jurisdiction over matters pertaining to municipal boundary adjustments, and also because statute does not specifically provide authority for such arrangements between local units. Although these problems never materialized because the recession made it necessary for General Motors to abandon the expansion plans, some persons believe Michigan law should provide for such arrangements."

"....

**"ARGUMENTS:**

"For:

"Annexation has historically been a controversial issue among local units of government, with townships often feeling prey to cities seeking to expand their tax bases. In spite of the involvement in recent years of the State Boundary Commission in the annexation process, and the commission's statutory obligation to consider questions of equity and efficiency before approving a proposed annexation, townships often feel victimized by this process since an encroaching city usually succeeds in taking the valuable portions of the township's land, and the township ends up with disjointed boundaries and a reduced tax base that makes it harder than

ever to supply needed services to township residents. The bill would create a new approach to the allocation of limited resources among local units of government that would avoid the problems traditionally associated with annexation, by allowing two or more local units to work out mutually agreeable contractual arrangements for the transfer of land from one unit to another, to the benefit of all parties concerned. Most importantly, the bill would allow the parties to the agreement to decide for themselves how and to what extent taxes and other revenues deriving from the transferred land would be shared."

This legislative history demonstrates that the purpose of Act 425 was to permit a governmental unit such as a city to acquire by contract with another governmental unit such as a township jurisdiction over a parcel of property which is noncontiguous to the city. Although the Legislature was aware of the annexation of territory of one governmental unit by another, it chose to authorize conditional transfer of property without limitation of contiguity of the parcel to the governmental unit seeking jurisdiction over the parcel. The legislative intent gleaned from the facts and events surrounding the purpose of Act 425, *Wilkins v Ann Arbor City Clerk*, 385 Mich 670, 691; 189 NW2d 423 (1971), foreclose any reading of Act 425 to require, by implication, that contiguity is a necessary prerequisite to the transfer of property between local governmental units for the establishment of an industrial park.

Because Act 425 deals with transfer of jurisdiction for a limited period and not annexation of territory to become a permanent part of the governmental unit, the decision of the Michigan Supreme Court in *Genesee Twp v Genesee County*, 369 Mich 592, 601-602; 120 NW2d 759 (1963), that annexation of noncontiguous property of a township to a city was impermissible because the statute failed to confer the authority in clear terms, is inapplicable.

The Legislature is free to require that jurisdiction over contiguous lands only be transferred under Act 425. Until it does so, the intent of the Legislature must be observed.

It is my opinion, therefore, that a city and a township may enter into a contract to transfer a noncontiguous parcel of property for the purpose of establishing an industrial park in accordance with 1984 PA 425.

FRANK J. KELLEY,  
*Attorney General.*

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# The County Press

## Elba turns down Lapeer

by SUSAN YOUNGER staff reporter

ELBA TWP—Township officials issued their own terms in response to the City of Lapeer's annexation request and offer of 1.4 mills of tax revenue.

In a Jan. 6 letter from Lapeer City Manager Dale Kerbyson, the Elba Township Board of Trustees voted to make a counter demand Tuesday evening. They are asking for 2.9 mills, increased sewer capacity and use of the city's recreation center at the same price used by Lapeer residents.

"We want something for all our residents," said Elba Township Treasurer Nina Suter after the meeting. "If they take the land they are taking away from all our residents."

The city hopes to annex 52 acres in Elba Township. Developer Peter Whitman has an offer to purchase property next to Rolling Hills Golf Course if city annexation is approved.

Kerbyson said he prefers to negotiate instead of going through the Michigan Boundary Commission. He's previously said it is to Elba's benefit to strike a deal, saying the township will not receive the extras if the state came back with a city favored ruling.

The township board unanimously approved sending the letter to Lapeer.

Click here to return to story:

[http://countypress.com/stories/012706/loc\\_20060127002.shtml](http://countypress.com/stories/012706/loc_20060127002.shtml)

*FYI  
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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
DIRECTOR

July 18, 2006

Christine A. Holmes  
Manager  
State Boundary Commission

RE: **Docket 2006-AP-02 Elba Township / City of Lapeer**

Dear Christine:

We have reviewed the PART I map, the PART III legal description and the PART V legal description in **2006-AP-02** and have the following comments for your consideration.

The PART I map incorrectly identifies the area lying South of the area proposed for annexation as being within the **City of Lapeer** limits. This property is within an Act 425 conditional transfer area.

The PART III legal description includes calls for an existing fence, an existing East-West 1/4 line fence and the West section line as occupied. Calls for physical monuments, record monuments and occupation lines control over bearings and distance calls. The **City of Lapeer** limits are not defined by ownership lines, and calls for occupation lines should not be included in a PART III legal description.

There are minor discrepancies between the bearings and distances for the PART III legal description with the bearings and distances of the annexation to the City of Lapeer filed on July 28, 1967 for the two common lines in these descriptions. For one of these common lines: the PART III legal description includes a call of 1323.37 feet to the West 1/4 corner, and the July 28, 1967 filing included a call of 1321.81 feet to the West line of section 1. Therefore the area proposed for annexation and the existing **City of Lapeer** limits overlap each other. The bearings and distances of the PART III legal description also include a portion of section 2, although its caption limits it to section 1.

The PART I map and the PART III legal description are substantially consistent with each other.

The area described in the PART V description for Whitman and Harrington is more than 75% of the area in the PART III legal description, exclusive of the road right-of-way.

The description for the area proposed for annexation commences at the Southwest corner of section 1 and the description for the annexation to the City of Lapeer filed on July 28, 1967 commences at the Northeast corner of section 1. Since these descriptions commence from two different government corners, it makes analysis more difficult.

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STATE BOUNDARY COMMISSION

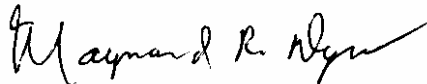
Christine A. Holmes  
July 18, 2006  
Page 2

We can confirm only point contiguity at the West 1/4 corner and an overlap of the area proposed for annexation onto the existing city limits of approximately 1.5 feet at the Northeast corner of the area proposed for annexation.

If annexation is granted as proposed in the petition, and when the property within the Act 425 conditional transfer area located South of the area proposed for annexation is transferred to the city, an Elba Township island within the City of Lapeer would be created.

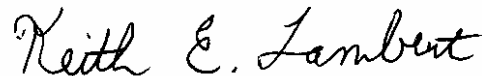
If annexation is granted as proposed in the petition, we recommend that the PART III legal description be revised to include calls for the City of Lapeer limits, the East-West 1/4 line and the West section line.

Sincerely,



Maynard R. Dyer, P.S., Director  
Office of Land Survey and Remonumentation

Sincerely,



Keith E. Lambert, P.S., Plat Examiner  
Office of Land Survey and Remonumentation

MRD:KEL:aim

